IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff, : CRIMINAL ACTION

v. : NO. 08-201-2

:

DAVID LEE SPIKES, :

Defendant. :

<u>ORDER</u>

AND NOW, this 14th day of September, 2015, upon consideration of Defendant David Lee Spikes's Motion for Judicial Notice and Fraud Upon the Court (Docket No. 287), it is hereby **ORDERED** that:

- Mr. Spikes's Motion for Fraud Upon the Court (Docket No. 287) is construed as a
 motion to vacate, set aside, or correct a federal sentence under 28 U.S.C. § 2255 and
 is **DISMISSED without prejudice** for lack of subject matter jurisdiction;
- 2. The motion is **TRANSFERRED** to the United States Court of Appeals for the Third Circuit, pursuant to 28 U.S.C. § 1631, as an application to file a second or successive § 2255 motion;
- 3. To the extent Mr. Spikes's Motion (Docket No. 287) requests that the Court take judicial notice of certain documents, that request is **DEEMED moot**.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge